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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,074	03/22/2004	Gerhard H. Wenzel	032016-0132	1393
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FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			EXAMINER PELHAM, JOSEPH MOORE	
			ART UNIT 3742	PAPER NUMBER

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,074

Applicant(s)

WENZEL, GERHARD H.

Examiner

Joseph M. Pelham

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-19, 21-26, 28-31, 33-39, 41-45 and 47-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 13-19, 21, 22, 24-26, 29-31, 33-35, 37-39, 41, 42, 44, 45 and 47-58 is/are rejected.
- 7) ☒ Claim(s) 12, 23, 28, 36 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The Examiner acknowledges Applicant's submission of the amendment filed 2/6/06. Claims 1-9, 11-19, 21-26, 28-31, 33-39, 41-45, and 47-58 are now pending.

Claim Rejections - 35 USC § 102

Claims 1, 3, 9, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 3354814 (US'814).

Referring to Fig. 3 and col. 4, lines 26-75, US'814 discloses a conveyor oven which "repeatedly moves and stops the food items as the food items pass through the heating chamber" (cl. 1), moves the food items to a non-heated position 41 after heating (cl. 3), user controlled heater output (cls. 9 & 14), and upper 36 and lower 37 heating elements (cl. 13).

Claim Rejections - 35 USC § 103

Claims 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'814 in view of US Pat. 5223290 (US'290).

The claims differ substantively from US'814 in calling for a conveyor belt, user control of belt stop time. While US'814 does not explicitly disclose a food receiving tray, this does not patentably distinguish the claimed invention from the prior art. It would have been obvious to use such a tray since it has long been conventional means to hold food cooked in a conveyor oven prior to serving.

Referring to Figs. 1-4, 6a, & 6b; and col. 2, line 23, through col. 4, line 10, col. 4, line 64, through col. 5, line 6, US'290 discloses user control of indexing cycle times for a conveyor belt and of heater function.

It would have been obvious to adapt the belt and control means of US'290 to the oven of US'814 since the belt of US'290 is disclosed to be suitable for baked foods, and such are known to be more reliable and durable than the rail and pusher means of US'814, and belt movement control would allow adjustment of speed and dwell time far more convenient than that of US'814, which requires interchanging gears.

Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'814 in view of US'290, as applied to claims 2, 4, 5, 7, and 8 above, and further in view of U.S. Pat. 6262396 (US'396).

Noting that US'814 contemplates already the cooking of other food items (col. 1, lines 30-34, etc.), the claims differ from US'814 in view of US'290 only in calling for reciting a plurality of cooking programs corresponding to a plurality of different food items. US'396 discloses a plurality of cooking programs corresponding to a plurality of different food items (6:55 - 7:7). It would have been obvious to adapt the programming function of US'396 to the oven of US'814 in view of US'290 since US'814 is intended to cook different food items, and such would automate the cooking process.

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Claims 15-18, 21, 34, 35, 37-39, 41, 42, 44, 45, 47-50, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6369360 (US'360) in view of US'290.

US'360 discloses, at col. 4, lines 15-37, and Fig. 1, a conveyor oven with quartz-halogen lamps, which attain operating temperatures almost instantaneously and comprise a glass envelope which transmits radiant energy, and a "Ceramasppeed" ribbon heating element, which appears to attain operating temperatures within a few seconds (2-3 sec. cited on the web site), and conveyor staging and receiving areas.

US'360 does not explicitly disclose moving the food to a stationary position in the oven for a selectable time, continuous or indexed movement, cycling between heating and standby orientations, and a receiving tray with two positions.

However, Referring to Figs. 1-4, 6a, & 6b; and col. 2, line 23, through col. 4, line 10, col. 4, line 64, through col. 5, line 6, US'290 discloses continuous or indexed conveyor movement, and user control of stopping cycle times for an indexing oven conveyor belt. It would have been obvious to adapt the indexing conveyor of US'290 to the oven of US'360 to more precisely control the cooking process. US'290 teaches that the oven is automatically "cycled between a heating orientation... and a stand-by orientation where the chamber is not being used to heat [a] food item" by means of a sensor (3:1-10). It would have been obvious to utilize cycle from heating to standby modes to conserve energy.

Moreover, a two-position cooking tray does not patentably distinguish the claimed invention from the prior art. It would have been obvious to use such a tray since it has long been conventional means to hold food cooked in a conveyor oven prior to serving; and a vertical position is conventionally utilized to either occupy less space when the oven is not used, or to join the conveyor to subsequent food preparation devices.

Claim 19, 29-31, 33, 51-53, 56, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'360 in view of US'290, as applied to claims 15-18, 21, 34, 35, 37-39, 41, 42, 44, 45, 47-50, and 58 above, and further in view of US'396.

The claim differs from US'360 in view of US'290 only in reciting a plurality of cooking programs corresponding to a plurality of different food items, and selecting two cooking programs applied in sequence to two food items.

US'396 discloses a plurality of cooking programs corresponding to a plurality of different food items (6:55 - 7:7), and the use of such programs would appear necessarily to meet the limitations of claim 51, since the oven of US'360 is intended for various items cooked in a pizza-type oven (e.g., calzones, etc.), and cooking a calzone after a pizza would require selecting a "second operating program" after a "first operating program" for a pizza. It would have been obvious to adapt the programming function of US'396 to the oven of US'360 in view of US'290 to automate the cooking process for a plurality of food items.

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Claims 22, 24-26, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. 6035765 (US'765) in view of U.S. Pat. US'290.

Referring to Fig. 1 and col. 3, lines 3-12, US'765 discloses a conveyor oven utilizing an S-shaped belt path. US'765 does not explicitly disclose stopping the belt while the food is in the heating chamber, and user control of belt stop-time and heater,

US'290 discloses, at Figs. 1-4, 6a, & 6b; and col. 2, line 23, through col. 4, line 10, col. 4, line 64, through col. 5, line 6, an indexing belt conveyor, user control of indexing cycle times and/or heater function, where the food item stops in the heating chamber and continues on completion of heating.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over US'765 in view of US'290, as applied to claims 22, 24-26, and 55 above, and further in view of US'396.

The claim differs from US'765 in view of US'290 only in reciting a plurality of cooking programs corresponding to a plurality of different food items. US'396 discloses a plurality of cooking programs corresponding to a plurality of different food items (6:55 - 7:7). It would have been obvious to adapt the programming function of US'396 to the oven of US'765 in view of US'290 since US'765 in view of US'290 is also intended to cook different food items, and such would automate the cooking process.

Claims 29-31, 34, 35, 37-39, 41, 44, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'290 in view of US'396.

Referring to Figs. 1-4, 6a, & 6b; and col. 2, line 23, through col. 4, line 10, col. 4, line 64, through col. 5, line 6, and col. 5, line 58 – col. 6, line 3, US'290 discloses a selectively continuous or indexing belt conveyor, rapidly-heating ribbon heaters (equivalently “etched foil”), user control of indexing cycle times and heater function, where the food item stops in the heating chamber and continues on completion of heating, and both heating and standby modes, since the oven is automatically “cycled between a heating orientation... and a stand-by orientation where the chamber is not being used to heat [a] food item” by means of a sensor (3:1-10).

US'290 does not disclose a plurality of cooking programs corresponding to a plurality of different food items, or a food receiving tray with two positions. However, US'396 discloses a plurality of cooking programs corresponding to a plurality of different food items (6:55 - 7:7). It would have been obvious to adapt the programming function of US'396 to the oven of US'290 since US'290 is also intended to cook a plurality of different food items, and such would automate the cooking process. Moreover, a cooking tray does not patentably distinguish the claimed invention from the prior art. It would have been obvious to use such a tray since it has long been conventional means to hold food cooked in a conveyor oven prior to serving; and a vertical position is conventionally utilized to either occupy less space when the oven is not used, or to join the conveyor to subsequent food preparation devices.

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Allowable Subject Matter

Claims 12, 23, 28, 36, and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

With respect to Applicant's questioning of a motive to combine US'396 with US'290, the Examiner notes that US'396 is intended for cooking a plurality of different food items, as is the oven of US'290; hence relying on the teaching of US'396 of a plurality of cooking programs is directly applicable to the operation of the oven of US'290.

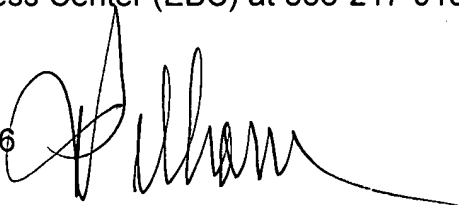
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/12/06



JOSEPH PELHAM
PRIMARY EXAMINER